

State Planning Office
Chapter 300: Certification Standards for Municipal Code Enforcement
Officers and Third-party Inspectors

Basis Statement and Response to Public Comment

Purpose of the Rule

This chapter establishes the standards and procedures that the State Planning Office uses to certify and recertify local code enforcement officers, local plumbing inspectors, municipal building officials, and third-party building inspectors, as required by 30-A MRSA, section 4451 and 10 MRSA, chapter 1103. The State Planning Office's authority to promulgate this rule comes from 30-A MRSA, section 4451 (5).

The rule amendments can be grouped into two parts: 1) amendments the Office makes to incorporate law changes and to modify program delivery as a result of law changes; and 2) amendments to establish certification standards for the new Maine Uniform Building and Energy Code.

The amendments respond to law changes as follows:

- increase the recertification cycle from five to six years;
- remove the requirement that the Office provide advanced training;
- in the absence of advanced training, allow work experience, education, professional licensure, and professional activity to count towards recertification and create an honorary certification process;
- clarify that municipalities may petition for an extension of the 12-month grace period if the necessary training and certification is suspended by the office; and
- provide for a code enforcement officer registry in the event the Office suspends the training and certification program.

The amendments establish the certification standards for the Maine Uniform Building and Energy Code as follows:

- establish the number of training contact hours for certification and recertification in the new building code;
- provide for municipal building officials to be tested to become recertified in the new building code;
- provide that municipal building officials only need be certified in those parts of the new building code that the municipality elects to have the building official enforce;
- give municipal building officials a year's grace period to become certified in the new building code;
- grandfather some municipal building officials from the examination for the new building code; and

- establish the certification and recertification standards for third-party inspections to match the standards for municipal building officials.

Rule Development

The training and certification committee of the Technical Building Codes and Standards Board has statutory authority (10 MRSA, section 9723) to establish the certification standards for municipal building officials and third-party inspectors for the new Maine Uniform Building and Energy Code (MUBEC). On April 29, 2010, that committee voted to establish the relevant building code standards that appear in this rule. The State Planning Office administers those standards as part of its Code Enforcement Officer Training and Certification program and adopts them under its rule-making authority for this program.

To assist with developing the building code standards, the training and certification committee of the Technical Building Codes and Standards Board established a technical advisory group. Any code enforcement officer or member of the public that was interested could participate on the technical advisory group. In addition to local code officers, some builders and design professionals served on the advisory group.

The State Planning Office also met with representatives from the Maine Municipal Association, the Maine Building Officials and Inspectors Association, the Mid-coast Code Enforcement Officer's Association, and the Aroostook County Code Enforcement Officers Association to seek input on the rule amendments.

The State Planning Office followed the public notice process for a hearing pursuant to the Maine Administrative Procedures Act. The proposed rule amendment was filed with the Secretary of State on May 4, 2010. On May 12, 2010, notice of the proposed rule amendment was published in the *Kennebec Journal*, *Lewiston Sun Journal*, *Bangor Daily News*, and *Portland Press Herald*. On the same date, the Office posted the proposed rule, hearing date, and comment period to its web site, notified the Executive Council of the Legislature, and, notified a 78-person list of interested persons, including those individuals who have specifically requested all rule-making notices. In addition, the Office notified all code enforcement officers currently certified in Maine for whom we had email addresses.

The Office also notified the following statewide groups and trade associations:

Maine Association of Planners
 Associated General Contractors of Maine
 Maine Contractors & Builders Alliance
 Home Builders & Remodelers Association of Maine
 American Institute of Architects, Maine Chapter
 Structural Engineers Association of Maine
 Maine Society of Professional Engineers
 Maine Association of Building Efficiency Professionals
 Maine Coalition of Home Inspection Professionals
 Construction Specifications Institute, Maine Chapter
 American Council of Engineering Companies of Maine

The State Planning Office held a public hearing on June 3, 2010 in Augusta. Approximately 12 people attended the public hearing. One person testified in opposition to Chapter 300. Three spoke neither for nor against it. The State Planning Office established a 10-day comment period following the public hearing. Eleven people sent written comments.

Response to Public Comment

Summarized below are comments received by the June 14, 2010, comment deadline. Each comment is followed by the Office's response.

In its responses, the Office uses the term "code enforcement officer" and "municipal building official" interchangeably. The Office recognizes that municipal building officials are a sub-set of code enforcement officers. Code enforcement officers also enforce land use regulations. However, since many towns appoint their code enforcement officer as the municipal building official, there is overlap.

For ease of reference, the sections referenced herein are those contained in the proposed amendment, not the renumbered sections in the adopted rule resulting from responses to public comment.

The Office also uses the following acronyms in its responses:

CEO – Code Enforcement Officer;
MUBEC – Maine Uniform Building and Energy Code; and
SPO – State Planning Office.

1. Comment: I am excited about the work that the SPO has done with regard to CEO certification and recertification. I believe it's a leap forward for our profession. I personally think the building certification standards are reasonable. *Mike Nugent, CEO, Old Orchard Beach*

Response: *The State Planning Office thanks Mr. Nugent for his comment.*

2. Comment: CEOs bring other skills to a municipality such as ordinance drafting, mapping expertise, database management, and road construction and land surveying knowledge, which are not recognized by the rules. *Calvin Beaumier, CEO, Town of Dixfield*

Response: *The statute directs the Office to define in its rule the basic knowledge requirements for serving as a CEO in Maine. The skills that the commenter mentions are excellent, but we believe are advanced, not basic.*

3. Comment: The building code books are very expensive and get updated every three years. *Paul Montague, CEO, Town of Wilton*

Response: *The State Planning Office will initially provide a building code book at no cost to municipalities over 2,000 population as part of the training offered through the Office. While the code associations may revise their codes every three years, Maine is not automatically adopting the most current version of the code. The Technical Building Codes and Standards Board will decide on an adoption schedule that is consistent with Maine law.*

4. Comment: Under the enforcement provisions of the Maine Uniform Building and Energy Code, will lenders require confirmation of code compliance prior to dispersing funds during new home construction? Will lenders require that certificates of occupancy be issued by the municipality prior to all final closings? *Barbara Berry, Maine Association of Realtors*

Response: *The State Planning Office's rule is designed to establish the training and certification standards for municipal CEOs and independent third-party inspectors. The requirements related to the administration and application of the Maine Uniform Building and Energy Code will be determined by the Technical Building Standards and Codes Board as part of separate rule-making. The State Planning Office will forward these questions to that board for their consideration.*

5. Comment: If code enforcement officers and third-party inspectors are to be certified in building codes, building contractors should also be required to be certified, or at least exposed to the code that they will be required to follow. *Paul Montague, CEO, Town of Wilton*

Response: *Currently Maine law does not require building contractors to be certified. The Office understands that the Bureau of Building Codes and Standards in the Department of Public Safety, which is responsible for administering MUBEC, intends to reach out to building contractor associations to inform them of the new building code.*

6. Comment: The organization of the rule is complex and difficult to follow and may present obstacles to understanding and compliance by regulated parties. *Doug Baston, President, North Atlantic Energy Advisors*

Response: *The commenter did not indicate how the organization is confusing or what he would like to see changed. The Office recognizes that a rule, much like a statue, is not always easy to read and follow to those not used to them. The Office will provide municipal CEOs and third-party inspectors guidance and assistance with regards to the new requirements and how they apply to them.*

7. Comment: Replace the word "shall" with "must" to reflect the usage recommendations in the state's legislative draftsman manual. *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *The construction of a rule does not necessarily have to follow legislative drafting requirements. The Office chose to use the following method of construction: "Shall" is used when directing a person or group of people to do something (i.e., the Director shall, the Office shall, the CEO shall, or the municipality shall...). "Must" is used when referring to a thing. (i.e., the registration must include or the examination must contain...); and when using the passive voice to direct an action (i.e., the fee must be deposited, or the application must be sent...).*

8. Comment: Suggest various areas for rewording to improve phrasing or syntax. *Jeff Hammond, CEO/LPI, Town of Bucksport, Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: *The suggested changes in wording are appreciated, but do not materially affect the intent of the rule language. The Office considered these suggestions, and made no changes to the rule, except as noted elsewhere in the response to public comments.*

9. Comment: Section 2 — Several comments concerned the version of the building codes that are referenced in the definitions. Some commenters suggested the definition should always be the most recent version of the code. Another commenter said that the rule should not enforce a specific version of a code; it should be left to the Technical Building Codes and Standards Board to adopt. *Dylan Vorhees, Natural Resources Council of Maine, Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: *The version of the code that applies in Maine is the one adopted by the Technical Building Codes and Standards Board, not necessarily the most recent version of the code. In the definitions, the Office specified the code versions that the Technical Building Codes and Standards Board has indicated it will adopt as follows:*

- *the 2009 edition of the International Building Code;*
- *the 2009 edition of the International Existing Building Code;*
- *the 2009 edition of the International Residential Code;*
- *the 2009 edition of the International Energy Conservation Code;*
- *the ASHRAE Standards 62.1-2007, 62.2-2007 and 90.1-2007; and*
- *ASTM, E-1465-06, Standard Practice for Radon Control Options for the Design and Construction of New Low-Rise Residential Buildings.*

The State Planning Office understands that to ensure that a rule is enforceable; the party being regulated must be able to read the rule and know what they have to do to comply. If the certification rule does not specify the specific code by date of edition, the regulated party would not know how to comply with it and the Office could not enforce it. For this reason, the Office specifies the versions of codes to be used by publisher and date of publication. The Office will amend its rule when the Technical Building Codes and Standards Board adopts new versions of the codes.

10. Comment: Section 2 — The building code board was very careful to distinguish between “codes” and “standards” in their nomenclature. The certification rule defines the residential radon and air quality parts of the new building code as “codes,” but the term the board uses is radon and air quality “standards.” Codes contain applicability provisions. They tell you not only how to do something, but when you need to do something; whereas standards simply tell you how to do it, how to construct a home such that radon doesn’t accumulate in the basement. They don’t tell you which homes have to do it, what parts of the state or what size structure. *Jeff Austin, Maine Municipal Association*

Response: *The Office recognizes the distinction between codes and standards for purposes of administering MUBEC. But for purposes of certification, this rule identifies the seven codes and standards of MUBEC that collectively make up the building standards specific area. In the definitions we correctly identify each as a code or standard. But for ease of describing the building standards specific area as a group, we*

refer to all of them as codes. The training itself will elaborate on the differences in the two terms.

11. Comment: Section 2 — Consider adding a definition of enforcement. The statute says that if a municipality chooses to enforce the new building code, the municipal building official must be certified. They could be enforcing the building code in one of two ways: either sending out their code enforcement officer to do the building inspections required under Title 25, section 2373; or if they rely on third-party inspector reports but reserve the right to read those reports for accuracy. If the town instead of simply accepting the report and issuing a certificate of occupancy, they read the report to see that the inspection work was done accurately, it's our impression that this second form of enforcement would require certification. *Jeff Austin, Maine Municipal Association*

Response: *The Office agrees with this interpretation. In response, the Office added a definition of enforcement as follows:*

Insert new section 2.15 and renumber the remaining definitions accordingly.

2.15 Enforce: "Enforce" means that a municipal building official takes action to either inspect buildings in accordance with 25 MRSA, sections 2351-2361, or to review inspection reports of third-party inspectors for accuracy, pursuant to a duly adopted municipal ordinance.

Accordingly, insert the following language in Section 5.3:

For purposes of this section, the definition of "enforce" in section 2.15 of this chapter applies.

12. Comment: Section 2.3 — Definition for "Any building code:" 1) doesn't the statutory reference refer to the 2003 code; 2) does it include the residential and commercial energy code; 3) is either of the energy codes considered a subset of the building code; 4) does it exempt the fire code and why? *Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: *The statutory reference in Section 2.3 refers to the Maine model building code, which was the basis for many municipal building codes adopted prior to MUBEC. The intent of this definition is to help a municipality determine whether the building code it had in place on August 1, 2008 meets the standard to trigger enforcement of MUBEC. This definition is also used to establish the standards for grandfathering. The Office believes the definition of "Any building code" is broad enough to cover energy codes if any have been locally adopted prior to MUBEC. The Office exempts the fire and life safety code as qualifying as any building code pursuant to 10 MRSA, section 9725. This simply means that a fire and life safety code on its own does not constitute a building code for the purposes of triggering the enforcement and grandfathering provisions.*

13. Comment: Sections 2.6 and 2.8 — Definitions of "Building official" and "Code enforcement officer" are confusing. The definitions need to be the same or clarify the difference between the

two. Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors

Response: Under Maine law, a municipality appoints a building official or a code enforcement officer (or both) and they may or may not be the same individual. The building official is appointed to administer building codes. The code enforcement officer may administer building codes, but also administers land use codes. In statute these are distinct and separate municipal positions. The same is true of local plumbing inspectors. The Office clarified this as follows:

Section 2.6 Definition of Building Official. “Building official” means an individual appointed by a municipality pursuant to 25 MRSA, section 2351. For purposes of this rule, a code enforcement officer is considered a building official when appointed by the municipality under section 2351 to administer any of the building codes that are part of the building standards specific area.

Section 2.22. Definition of Local Plumbing Inspector. “Local plumbing inspector” means an individual appointed by the municipality pursuant to 30-A MRSA, section 4221. For purposes of this rule, a code enforcement officer is considered a local plumbing inspector when appointed by the municipality under section 4221 to administer the internal plumbing or subsurface waste disposal specific areas.

14. Comment: Section 2.23 — Definition of “Maine Uniform Building and Energy Code:” How does this definition relate to the definitions for “Commercial building code,” “Commercial energy code,” and “Residential energy code.” Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors

Response: The commercial building and commercial and residential energy codes are part of seven codes and standards that make up the Maine Uniform Building and Energy Code. The separate definitions for these codes and standards specify the publisher and version of the code to be used.

15. Comment: Section 2.31 — Definition of “Registered code enforcement officer;” Is this definition a subset of “Code enforcement officer?” Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors

Response: No, a registered code enforcement officer would replace a certified code enforcement officer in the event that the Office is forced to suspend its training and certification program due to lack of funds.

16. Comment: Section 3.1 — I am uncomfortable with the one year’s grace period for a CEO to become certified at least as it applies to the energy code. I don’t see any justification for not requiring the expertise that would be expected of any new third-party inspector. Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical

Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors

Response: *Maine law provides a one-year grace period for new CEOs to become certified in any of the codes they are appointed to enforce (30-A MRSA, section 4451 (1)). SPO believes it is fair to extend this allowance to existing CEOs that are appointed to administer a new area(s) of responsibility.*

17. Comment: Section 3.1 (A) — Should this be called a reconsideration rather than an appeal? Generally appeals are taken to an independent authority, rather than another person in the same department. *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *“Reconsideration” generally means that the same person is looking at the matter again. The appeal process here calls for a different senior staff person to review the original decision. This is properly called an appeal.*

18. Comment: Section 3.1 (A) — Should the CEO be allowed to request a reconsideration or appeal? *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *The Office believes that it is the municipality’s responsibility, as the appointing authority, to request an appeal.*

19. Comment: Section 3.2 — The hardship standard that would permit an extension of a CEO’s one-year grace period is too vague. The burden of this hardship would actually fall on the new home or commercial property owner who would not receive an inspection from a properly trained inspector. *Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: *A hardship provision for the extension of the one-year grace period is specified in Maine law. SPO’s rule must conform to statute. In section 2.17, the Office defines “hardship.”*

20. Comment: Section 3.4, paragraph 3 — Code enforcement officers should be allowed to act as third-party inspectors in municipalities where they are not authorized to act as CEO. *Don Lagrange, CEO, Southwest Harbor.*

Response: *Current Maine law prohibits municipal CEOs from serving as third-party inspectors in any municipality (25 MRSA, section 2371). The State Planning Office’s rule must conform to state law. The Office crafted its rule so that, if the Legislature amends the law to permit municipal building officials to serve as third-party inspectors in another town, the Office’s rule will not prohibit it.*

21. Comment: Section 4.1 (A) — Energy and ventilation standards should be added to the list of specific areas in which a municipal CEO must be certified. *Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: *The energy and ventilation standards are a part of the building standards specific area.*

22. Comment: Section 5 — The recertification process places an undue hardship on the town and the CEO. The time and travel to attend training and take examinations is expensive. *James Schoenmann, CEO, Town of Jackman*

Response: *The State Planning Office recognizes that in these difficult economic times, municipal budgets are tight. In the amended rule, the Office attempted to expand the recertification provisions to make it less burdensome on municipalities. In the amended rule, CEOs can now count work experience, education, professional licensure, and professional activity towards recertification. We believe this is in keeping with the statutory requirement that, in order to become recertified every six years, a code enforcement officer must successfully complete ongoing training.*

23. Comment: Section 5, first sentence — Consider rewording for clarity. *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *The Office reworded this section similar to the commenter's suggestion as follows:*

A code enforcement officer shall be recertified in each specific area and in legal issues and enforcement techniques within six (6) years of obtaining any certification.

The Office also changed all references within the document to “legal issues” to “legal issues and enforcement techniques.”

24. Comment: Section 5.1, third paragraph — Consider rewording for clarity. *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *The Office reworded this section in accordance with the commenter's suggestion as follows:*

To become recertified by completing training activity, a code enforcement officer shall demonstrate successful completion of twelve (12) contact hours...

25. Comment: Section 5.1 (A) — Does this align with existing training/availability or identify the training yet to be developed? This is backwards. *Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: *This provision limits a CEO from counting basic training toward recertification more than once in any six-year cycle. As such, a CEO would need to supplement basic training that is provided by SPO with advanced training provided by other organizations.*

26. Comment: Section 5.2 — Should there be an application submittal deadline for filing recertification evidence? *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *The Office does not think that specifying an application submittal deadline would be practical. Each code enforcement officer is on a different six-year cycle depending on the date on which their employment began. Each code enforcement officer's certification expiration, and therefore their need to submit recertification evidence, falls on different months throughout the year.*

27. Comment: Section 5.3 — The proposed rules require training programs and certification that are essential to ensure any CEO or third-party inspector is competent in their knowledge to administer and apply the new Maine Uniform Building and Energy Code, including: recognition of the experience of presently certified CEOs and the inclusion of transition training that will familiarize them with the new Maine state code; requirement for training and certification of new CEOs that is reasonable in length and contains courses that cover the essential topics and provides a reasonable period to complete these requirements; parity between the training and certification of municipal CEOs and third-party inspectors; and recognition of national certification of CEOs and third-party inspectors. *Dorothy Harris, Vice President of Governmental Affairs, International Code Council*

Response: *The State Planning Office thanks Ms. Harris for her comments.*

28. Comment: Section 5.3 — It is unfair that those who are already certified would have to undergo the same testing as someone walking in off the street with no prior experience. Examinations should be required for individuals not currently employed as a CEO, but not be required for a CEO already certified in building standards. Code enforcement officers already certified should instead undergo the training and then pass a hands-on inspection administered by the instructor at the end of the training, demonstrating ability to look up codes and confirm whether or not something was adequately constructed. Those who are currently CEOs and not certified in building standards should have the option of a written or hands-on exam for 12 months, after which time, everyone will be required to take the written exam. *Calvin Beaumier, CEO, Town of Dixfield*

Response: *State law requires all code enforcement officers to be certified by examination (30-A MRSA, section 4451, sub-section 4). The State Planning Office's rule must conform to state law. The Office uses a combination of multiple choice, true/false, and case study questions. The Office also provides training workshops, study objectives, and a study manual to help CEOs with the examination. CEOs taking examinations may also use their codes and study manuals during the examination as references. Recognizing that a basic skill for CEOs is to be able to find the information they need in the code, the building code training will contain training elements that instruct on how the code books are organized and how to use them, rather than having to memorize extensive code provisions. The Office does not have the resources to administer hands-on inspections as part of the examination.*

29. Comment: Section 5.3 — The training and recertification requirements for existing CEOs in the new building code are unfair. The rules of the game are being changed mid-stream. *James Schoenmann, CEO, Town of Jackman and Calvin Beaumier, CEO, Town of Dixfield*

Response: *The State Planning Office understands that the training and certification requirements for building standards are different than what was required prior to the Legislature's enactment of the new Maine Uniform Building and Energy Code (MUBEC). The new building code contains many new provisions that CEOs have not previously enforced such as energy conservation and air quality standards and existing building reconstruction. The Legislature believed that it was in the public benefit to adopt these standards. However, it recognized the burden enforcing them would fall to municipalities and their code enforcement officers. To help alleviate this burden, the Legislature exempted municipalities under 2,000 population from enforcing MUBEC. In addition, municipalities over 2,000 population may elect not to have their CEO enforce MUBEC and have third-party inspectors perform inspections instead. If the municipality elects to have third-party inspectors perform inspections for all or parts of MUBEC, the CEO would not have to be trained or certified in the part(s) that he or she does not enforce.*

30. Comment: The rule should require all who are currently certified in building standards to undergo training and recertification (no exam). *Calvin Beaumier, CEO, Town of Dixfield*

Response: *Section 5.3 of the rule does require all certified municipal building officials to be newly trained in building standards as a result of the Legislature's adoption of MUBEC. Building officials, who meet the grandfathering requirements, are exempt from examination(s) and need only take 3-hour update course(s) in the MUBEC code(s) that they enforce. If they do not meet the grandfathering requirements, they need to take the requisite number of hours of training to be recertified in the MUBEC code(s) they enforce.*

31. Comment: Section 5.3 — Some small towns that are members of the Maine Building Officials and Inspectors Association feel that 38 contact hours of building standards training in a 12-month period will be difficult to complete. *Mike Nugent, CEO, Old Orchard Beach, representing the Maine Building Officials and Inspectors Association*

Response: *The Office recognizes that, if a municipality elects to have its CEO enforce all seven codes and standards that comprise MUBEC, there is a lot of training involved. We hope that the staggered implementation enacted by the Legislature will alleviate pressure on those municipalities who did not have any building code adopted on August 2008. In addition, the Bureau of Building Codes and Standards will assist municipalities with identifying other options for enforcing MUBEC, such as contracting with other municipalities or using third-party inspectors. That way, a municipality could elect to have its CEO enforce just the residential building code in the first year, for example. In that case, the CEO would only need to become trained and certified in the residential code to start and the municipality could elect to use one of the other enforcement options for the commercial building, energy, and air quality codes. Then, when the CEO is ready, the municipality could appoint him or her to enforce another code and have a year in which to become trained and certified in that, and so on.*

32. Comment: Section 5.3 — The number of hours of training required for certification and recertification in energy codes is not enough. Most states require 20 hours to keep a certification. The commercial energy code is more complex than residential and there should be more training required. The required training hours established for ASHRAE 62 are not enough. *Brian*

McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors

Response: *The Office was guided by the five-member training and certification committee of the Technical Building Codes and Standards Board as well as their technical advisory group in establishing these required training hours. The energy and air quality experts on those groups identified the number of hours of training necessary to ensure a basic, introductory level of understanding in administering energy codes. The training and certification committee will review the training content annually to assure that it meets the needs of code enforcement officers.*

33. Comment: Section 5.3 — Several commenters suggested content for energy training. CEOs need a high level of knowledge regarding the energy efficiency aspects of code enforcement not generally seen in the trades today. Training in energy codes should not be a memorization exercise, rather code officials should learn the purpose and basic engineering practice that form the basis of code provisions and how to use the code documents to review plans and conduct site visits. To be effective, this training should focus on energy usage/results/importance of code compliance/noncompliance; understanding of the effect of energy usage for code compliance; understanding of core building sciences; the basics of different heating, ventilation, and air conditioning systems; how to calculate lighting power allowance/density; and how to review plans for compliance, and when to visit the site and what to look for. *Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors, Mark Blake, Structure Metrics*

Response: *The Office thanks the commenters for this guidance. The rule does not specify training content. For this, the Office uses its discretion and is advised by a five-member training and certification committee of the Technical Building Codes and Standards Board. In accordance with statute, the Office will ensure that its training provides a basic, introductory level of understanding in administering energy codes. The training and certification committee will review the training content annually to assure that it meets the needs of code enforcement officers.*

34. Comment: Sections 5.3 (A) and 8 (1) (A), the language that says a code officer or third-party inspector need only be certified in the code he or she enforces/inspects is unclear. Suggest adding a definition for “applicable building standards code.” *Dylan Vorhees, Natural Resources Council of Maine, Jeff Hammond, CEO/LPI, Town of Bucksport, Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: *The Office believes this language is clear. For a minor clarification, the Office amended Section 8 (1) (A), second paragraph as follows:*

A third-party inspector need only be certified in the individual code(s) within the building standards specific area that are applicable, meaning the code(s) for which the third-party inspector is ~~commercially engaged~~ hired to perform inspections.

35. Comment: Section 5.3 (G) — Maine’s energy code is new and standards in that area are important. It appears that code officers can be grandfathered in the energy code if they have been continuously enforcing any building code. The grandfathering provision is problematic and not likely to work for the energy code because few people are really doing the energy codes. *Dylan Vorhees, Natural Resources Council of Maine, Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: The grandfathering provision on the energy code only applies to CEOs that have previously enforced an energy code. This provision is limited by the definition of “Any Building Code” in section 2.2. SPO believes that few if any municipalities have an existing energy code, thus we expect the grandfather provision for the energy code to apply in few instances.

36. Comment: Section 5.3 (E) — This field demands demonstrated knowledge and interest in energy and building performance and certification by a national organization such as the Building Performance Institute or RESENT to name two. CEOs should not be grandfathered in the energy code compliance sections unless they are nationally certified as competent. *Mark Blake, Structure Metrics*

Response: The Office chose to develop a certification specific to Maine laws and codes. The Maine certification will be tailored to meet Maine’s needs and budget and will be a rigorous process that aptly demonstrates a code enforcement officer’s basic code knowledge. In section 5.3 (F) and 8.2, the rule specifically recognizes national certifications as a valid replacement for Maine certification.

37. Comment: Section 8 — The rule provisions that allow for third-party inspectors will be abused. Banks and brokers will recommend third-party inspectors to homeowners that they know will give a positive inspection. *Calvin Beaumier, CEO, Town of Dixfield*

Response: Current Maine law allows for third-party inspectors to perform inspections (25 MRSA, section 2373). The State Planning Office’s rule must conform to state law. However, Public Law 2009, Chapter 261 directs the Technical Building Codes and Standards Board to review the issues regarding third-party inspectors and, by December 1, 2010, make recommendations to the Legislature for changes to the law. The Office will forward this comment to the Technical Building Codes and Standards board for consideration.

38. Comment: Section 8 — If we are going to foster the use of third-party inspectors, which is a private sector response that’s different than a public sector response, we need to be mindful of that and be flexible enough to make it work. The quality of certification for third-party inspectors should be the same as for code officers. *Dylan Vorhees, Natural Resources Council of Maine*

Response: The certification standards are the same for municipal building inspectors and third-party inspectors with the exception that there is no grace period and no grandfathering provisions for third-party inspectors.

39. Comment: Section 8 — The proposed rules have the potential to negatively impact housing affordability in Maine if training and certification for third-party inspectors is not affordably priced and the cost of certification discourages them to become certified. *Barbara Berry, Maine Association of Realtors*

Response: The State Planning Office seeks the most cost-effective ways to provide the needed training and certification and is examining all options to reduce those costs in order to keep it affordable and accessible across the state.

40. Comment: Section 8.1 (B) — The training activity standards in sections 5.3 and 5.4 should apply to third-party inspectors. *Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: There is no section 5.4, and section 8 governs training and certification of third-party inspectors in place of 5.3. For the most part the two sections are identical. One difference is that section 5.3 distinguishes between different effective dates depending on population of the municipality, which is not applicable to third-party inspectors. Another is the grandfathering language for municipal CEOs, which is not granted to third-party inspectors.

41. Comment: Section 8.2 — Regarding recognition of professional certification programs, you might want to research, consider, and then reference the ICC certification here specifically. *Brian McCowan, Vice President, Energy and Resource Solutions, Michael DeWein, Technical Director, Building Codes Assistance Projects, and Doug Baston, President, North Atlantic Energy Advisors*

Response: The language as written we believe would include ICC certification. The Office recognizes other national energy code certification programs including Building Performance Institute or RESNET and others. The Office does not want to specifically favor one national certification over another. The Office will review each national certification program on a case-by-case basis to determine that it provides the basic knowledge required by Maine law.

42. Comment: Section 10 — Should a registry be created for third-party inspectors? *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: Yes, the rule provides for a registry for third-party inspectors in section 8.4, with a reference that the registration procedures in section 10 apply to third-party inspectors.

43. Comment: Section 10 — What if the program is suspended during a grace period for initial certification? Should that grace period also be extended? *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: The grace period could be extended as provided in section 3.2.

44. Comment: Section 10 — The suspension provision here conflicts with several other sections that refer to a requirement of certification or recertification within a 6-year period. Should it be clarified in those sections that there is any exception to the 6-year requirement? *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *The Office reworded the appropriate sections by adding the phrase, “except as provided in section 10...”*

45. Comment: Section 10 — Should a recertification cycle suspension apply to a CEO that has fulfilled all recertification credits prior to the completion of the 6-year period? *Jeff Hammond, CEO/LPI, Town of Bucksport*

Response: *The Office believes that it should since we have no way of predicting when the program might be restored after it has been suspended. If it is several years, a CEO that had fulfilled his or her recertification credits at the time the program was suspended might still be impacted.*